

Employment Practices *Update*

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Understanding Workplace Harassment Myths

Misunderstanding or misapplying workplace harassment law principles can land an emergency services organization (ESO) in hot water. For ESO leaders, one false step in identifying, investigating, or attempting to resolve work-related harassment can lead to liability for the organization.

This article tackles common workplace harassment myths and clarifies how your ESO can manage these risks. Understanding workplace harassment myths can help protect ESO employees, volunteers, and the entity itself.

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Myth #1: The alleged victim of harassment must tell the offender the behavior is offensive and to stop.

Many people work under the false impression that their behavior doesn't constitute unlawful harassment unless they have been told their words or behaviors are offensive, and continue regardless.

This myth also hinges on the fact that there is typically a difference in power between the victim and offender. Fears (i.e., retaliation) are often associated with confronting the person or persons who are creating an offensive or hostile work environment.

Members must be educated that they may voluntarily tell the person that his or her conduct is offensive and request that it stop. However, if members are uncomfortable doing so, they need to know the ESO makes available multiple avenues of internal complaint and will promptly and thoroughly investigate harassment allegations.

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Myth #2: If an ESO member in good faith finds certain behavior to be offensive, it must be considered unlawful harassment.

Just because one person believes certain behavior is harassment does not make it so. We are all individuals who have different opinions as to what behaviors are offensive. For instance, what if a member of your ESO is hypersensitive? Just because a hypersensitive member is offended by certain language or behaviors, it doesn't automatically make the actions unlawful. In fact, the behavior in question could fall well below the standard of what most reasonable people would determine to be offensive or unlawful harassment.

As an ESO leader, you must assess the behavior in question to determine whether the individual complaining was truly offended and whether most reasonable people would also find the behavior offensive.

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Myth #3: When investigating work-related harassment, it must be proven beyond a reasonable doubt that the harassment occurred before a member can be disciplined.

Members of your ESO, especially one who is accused of work-related harassment, may falsely believe it must be proven beyond a reasonable doubt that the harassment occurred. First, the “beyond a reasonable doubt” standard of proof applies to criminal and not civil cases. Second, in determining whether alleged workplace harassment occurred, the more appropriate standard of proof is “preponderance of the evidence”. Thus, was it more likely than not that the harassment occurred? Does the preponderance of the evidence indicate the complainant found the behavior offensive?

This analysis is important, because in harassment accusations, there is often no “smoking gun” evidence and there may be a “he said, she said” situation. In the end, the ESO must investigate harassment allegations in a timely and comprehensive manner and make a determination as to whether it was more likely than not that the harassment occurred. Also don’t forget that an investigation may conclude that no determination could be made as to whether harassment did or did not occur.

Myth #4: If two coworkers are romantically involved with each other, the ESO may not infringe upon their constitutional rights of association by meddling in their relationship in any way.

It is not uncommon for ESO members to mistakenly believe their constitutional rights (i.e., freedom of association, expression, privacy, and speech) somehow shield them from any ESO involvement with their dating or romantic relationships with coworkers. Particularly after a break up, coworkers’ personal problems often become problems for the organization. ESOs may be forced to address serious exposures associated with coworkers’ dating or romantic relationships, including, but not limited to:

- Hostile work environment harassment
- Quid pro quo harassment (i.e., supervisor involved with subordinate)
- Reverse discrimination (claims made by those not shown favoritism in employment conditions: promotion, training opportunities, desirable shifts, and general working conditions/ preferential treatment)
- Retaliation
- Criminal allegations (restraining orders, stalking, assault and battery)

Myth #5: Members reporting harassment must put their complaint in writing in order for the ESO to take action.

This statement is false because the ESO can be put on notice of alleged harassment by a variety of means other than the victim lodging a written complaint. This notice or knowledge can also result from a verbal complaint, anonymous report, or coworkers witnessing behavior that may qualify as harassment. Regardless of how the ESO was put on notice, a timely investigation must commence to determine the validity of harassment allegations.

Myth #6: In regard to member-owned personal electronic devices such as Smartphones, laptops, camera phones, or PDAs, the ESO may not inspect or review the content of these devices.

ESO members are bringing personal electronic communication devices into ESO facilities. These personal devices can be used in inappropriate ways to create or contribute to a hostile work environment. Examples include:

- Sharing racially, sexually, or sexist-charged emails
- Displaying pornographic materials online
- Showing nude photographs on camera phones

It is not advisable for the ESO to randomly monitor members’ usage of their personal electronic devices. However, it is within the ESO’s rights to inspect these personal items if there is reasonable suspicion that these items are being used in a manner that could create an uncomfortable,

intimidating, or offensive work environment.

When members bring their personal items into the workplace, they should be educated that they still must abide by ESO policies establishing a code of conduct and prohibiting harassment. It is recommended that the ESO implement a comprehensive policy detailing the ESO’s right to monitor personally owned electronic devices, particularly when given reasonable belief that these items are being utilized inappropriately at work.

Myth #7: Behaviors or comments must be repeated or pervasive to be considered unlawful harassment.

This myth is predicated upon the belief that behavior may only be considered unlawful harassment if it is repeated. This is false because certain offensive behavior can be so egregious, it need only occur once or rarely for it to constitute unlawful harassment. Inappropriate touching or threatening words are examples of one-time occurrences that can ultimately alter the workplace experience and therefore be considered unlawful harassment.

Myth #8: Maintaining a comprehensive harassment policy is sufficient for protecting our ESO from harassment liability exposures.

Don’t be fooled into thinking that your ESO is best protecting itself from workplace harassment liability exposures simply by instituting a prevention policy. In fact, a policy that collects dust on the shelf and isn’t supported by periodic training could hurt an ESO in the event of a lawsuit. Annual training for all ESO members is recommended to demonstrate the organization’s commitment to ensuring a safe and productive work environment.

Conclusion

Understanding the eight harassment myths addressed in this article will arm ESO leaders with knowledge to help protect the integrity of the interpersonal relationships within the organization. To dispel harassment myths will also result in fair application of ESO rules and personnel laws.